that one room was occupied by his mother and sisters and the other room was occupied by his brother the accused. And the accused himself said in his statement from the dock that his brother "the Black Devil" was staying with his elder brother and he did not at any time allege that his brother had at any time shared that room with him just as Chye Lin Kin made no mention that he ever shared the room with the accused.

In my judgment the materials before the court warrant a finding that the accused was in sole occupation of the room where the pistols were found and the evidence surrounding the recovery of the pistols and the circumstances under which the pistols were recovered clearly establish that not only had the accused exclusive control of the pistols but he had full knowledge of their presence.

After considering very carefully both the prosecution and the defence evidence I am satisfied beyond any reasonable doubt that the accused was guilty of the offences charged and I convicted the accused for the same. Consequently I passed the only sentence known to law, namely, death.

Order accordingly.

Solicitors:

SINAPPAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Ali Ag. C.J. (Malaya)) February 11, 1977]
[Kuala Lumpur — Selangor Criminal Appeal No. 63 of 1976]

Criminal Law & Procedure — Seizure — Forfeiture — Telecommunications Act, 1950, ss. 38(1)(b), 39(2) and 43(1).

Telecommunications — Radio communication apparatus — Possession without licence — Seizure — Forfeiture — Telecommunications Act, 1950, ss. 38(1)(b), 39(2) and 43(1).

In this case the appellant, who was charged with an offence under section 38(1)(b) of the Telecommunications Act 1950 of having possession without a licence of radio communication apparatus with a view to sale, pleaded guilty and was convicted. He was fined $100 and, in addition, the radio communication apparatus which was seized by the police was ordered to be forfeited. His appeal is against the order of forfeiture on the ground that section 43(1) of the Act which applies to an offence under section 38(1)(b), gives the magistrate no power to order forfeiture.

Held: in the circumstances of this case it was clear that although properly armed with a search warrant the police had no right to seize the radio communication apparatus as there was no evidence to show that it had been installed or worked within the meaning of sections 38(1)(a), 39(1) or 39(2) of the Act. The seizure of the apparatus was therefore wrongful and not authorised by law. It followed therefore, that no order of forfeiture could validly be made in respect of the article or apparatus which was wrongly seized.

CRIMINAL APPEAL, CERTIFICATE UNDER SECTION 319 OF THE CRIMINAL PROCEDURE CODE.

Matthew Thomas for the appellant.

Ee Chin Seng (Deputy Public Prosecutor) for the respondent.

Ali Ag. C.J. (Malaya): The appellant, charged with an offence under section 38(1)(b) of the Telecommunications Act 1950 (Revised 1970 Malaysia Act No. 20) of having in possession without a licence radio communication apparatus with a view to sale, pleaded guilty and was convicted. He was fined $100 and, in addition, the radio communication apparatus which was seized by the police was ordered to be forfeited. His appeal is against the order of forfeiture on the ground that section 43(1) of the Act which applies to an offence under section 38(1)(b), gives the magistrate no power to order forfeiture.

In this case the radio communication apparatus was seized by the police, having obtained a search warrant from the magistrate under section 39(2) of the Act, which provides for the granting of such warrant if the magistrate is satisfied on information on oath that there is reasonable ground for believing (a) that a radio communication station has been established or (b) that any radio communication apparatus has been installed or worked without a licence in any place in Malaysia or on board any local vessel or local aircraft. If there had been evidence of either (a) or (b) against the appellant he would no doubt have been charged with an offence under section 38(1)(a) and that if he was convicted, would result in the forfeiture of the radio communication apparatus which was properly seized. Such forfeiture is authorised by section 39(1). But the appellant was not so charged clearly because there was no evidence of either (a) or (b) against him. He was charged with an offence under section 38(1)(b) and the question arises whether in terms of section 43(1) there is power to order forfeiture.

The learned magistrate was of the view that there is power to order forfeiture; not only that, she said forfeiture was mandatory. She was no doubt construing the words "in addition to the forfeiture of any article seized" in section 43(1).

In the circumstances of this case it is clear that although properly armed with a search warrant the police had no right to seize the radio communication apparatus as there was no evidence to show that it had been installed or worked within the meaning of sections 38(1)(a), 39(1) or 39(2) of the Act. The seizure of the apparatus was therefore wrongful and not authorised by law. It follows therefore, that no order of forfeiture can validly be made in respect of the article or apparatus which was wrongly seized.

For the reasons above stated I allowed this appeal and set aside the order of forfeiture.

Appeal allowed.

Solicitors: *Shook Lin & Bok.*